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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**BARRY WILLIS; COREY
GOLDSTEIN; PAUL STEMPLER;
AND, CARRIE COUSER;
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiffs,

v.

**JPMORGAN CHASE & CO.;
AND, CHASE BANK (USA) N.A.,**

Defendants.

Case No.: CV12-10252 DMG (SHx)

CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. BARRY WILLIS (individually as “Willis” or collectively as “Plaintiffs”); COREY GOLDSTEIN (individually as “Goldstein” or collectively as “Plaintiffs”); PAUL STEMPLE (individually as “Stemple” or collectively as “Plaintiffs”); and, CARRIE COUSER (individually as “Couser” or collectively as “Plaintiffs”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of JPMORGAN CHASE & CO. (independently as “JPMorgan” or collectively as “Defendants”); and, CHASE BANK (USA) N.A. (independently as “Chase” or collectively as “Defendants”), in negligently contacting Plaintiffs on Plaintiffs’ cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiffs’ privacy. Plaintiffs allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiffs. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's purpose).

4. Congress also specifically found that "the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call...." Id. at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

6. The Ninth Circuit recently affirmed certification of a TCPA class case remarkably similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __ F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).
8. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391(b) because Defendants are subject to personal jurisdiction in the County of Los Angeles, State of California.

PARTIES

9. Plaintiffs are, and at all times mentioned herein were, citizens and residents of the State of California. Plaintiffs are, and at all times mentioned herein were, "persons" as defined by 47 U.S.C. § 153 (10).

10. Plaintiffs are informed and believe, and thereon allege, that Defendant JPMorgan is, and at all times mentioned herein was, a corporation whose State of Incorporation and principal place of business is in the State of New York. JPMorgan, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). JPMorgan is multinational bank that provides personal and savings accounts, amongst other services. Plaintiffs allege that at all times relevant herein JPMorgan conducted business in the State of California and in the County of Los Angeles, and within this judicial district.

11. Plaintiffs are informed and believe, and thereon allege, that Defendant Chase is, and at all times mentioned herein was, a corporation whose State of Incorporation and principal place of business is in the State of New York. Chase, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Chase is multinational bank that provides personal and savings accounts, amongst other services. Plaintiffs allege that at all times relevant herein Chase conducted business in the State of California and in the County of Los Angeles, and within this judicial district.

FACTUAL ALLEGATIONS

12. At all times relevant, Plaintiffs were citizens of the State of California. Plaintiffs are, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

13. Defendants are, and at all times mentioned herein were, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).

14. At all times relevant Defendants conducted business in the State of California and in the County of Los Angeles, within this judicial district.

15. On good faith information and belief, Plaintiffs did not provide Plaintiffs’ cellular telephone numbers to Defendants through any medium at any time.

16. Beginning in mid 2009, Defendants began contacting Plaintiff Goldstein with an automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) using an “artificial or prerecorded voice” as prohibited by 47 U.S.C. 227(b)(1)(A) in order to collect upon an alleged debt alleged to be owed by Goldstein

- 1 17. Beginning on July 18, 2011, Defendants began contacting Plaintiff Willis with an ATDS
2 as defined by 47 U.S.C. § 227(a)(1) using an “artificial or prerecorded voice” as
3 prohibited by 47 U.S.C. 227(b)(1)(A) in order to collect upon a debt associated with an
4 account that does not belong to Willis.
- 5 18. Beginning in November 2012, Defendants began contacting Plaintiff Couser with an
6 ATDS as defined by 47 U.S.C. § 227(a)(1) using an “artificial or prerecorded voice” as
7 prohibited by 47 U.S.C. 227(b)(1)(A) in order to collect upon a debt associated with an
8 account that does not belong to Couser.
- 9 19. Beginning in December 2012, Defendants began contacting Plaintiff Stemple with an
10 ATDS as defined by 47 U.S.C. § 227(a)(1) using an “artificial or prerecorded voice” as
11 prohibited by 47 U.S.C. 227(b)(1)(A) in order to collect upon a debt associated with an
12 account that does not belong to Stemple.
- 13 20. On good faith information and belief, at no time did Plaintiffs ever enter in a business
14 relationship with Defendants.
- 15 21. Defendants obtained Plaintiffs’ contact information through unknown means.
- 16 22. This ATDS has the capacity to store or produce telephone numbers to be called, using a
17 random or sequential number generator.
- 18 23. To date, Plaintiff Goldstein has received approximately thirty calls from Defendants
19 where Defendants utilize an “artificial or prerecorded voice” in conjunction with an
20 ATDS.
- 21 24. To date, Plaintiff Willis has received approximately nine calls from Defendants where
22 Defendants utilize an “artificial or prerecorded voice” in conjunction with an ATDS.
- 23 25. To date, Plaintiff Couser has received approximately twelve calls from Defendants where
24 Defendants utilize an “artificial or prerecorded voice” in conjunction with an ATDS.
- 25 26. To date, Plaintiff Stemple has received approximately four calls from Defendants where
26 Defendants utilize an “artificial or prerecorded voice” in conjunction with an ATDS.
27
28

1 27. The telephone number Defendants called was assigned to a cellular telephone service for
 2 which Plaintiffs incurred a charge for incoming calls and texts pursuant to 47 U.S.C. §
 3 227(b)(1).

4 28. These telephone communications constituted communications that were not for
 5 emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

6 29. These telephone communications constituted telephone solicitations as defined by 47
 7 U.S.C. § 227(a)(4).

8 30. Plaintiffs did not provide prior express consent to receive calls or messages on Plaintiffs'
 9 cellular telephones, pursuant to 47 U.S.C. § 227 (b)(1)(A).

10 31. These telephone communications by Defendants, or its agent, violated 47 U.S.C. §
 11 227(b)(1).

12 **CLASS ACTION ALLEGATIONS**

13 32. Plaintiffs bring this action on behalf of themselves and on behalf of and all others
 14 similarly situated ("the Class").

15 33. Plaintiffs represent, and are members of the Class, consisting of all persons within the
 16 United States who received any unsolicited marketing and artificial or prerecorded voice
 17 messages from Defendants without prior express consent which message by Defendants
 18 or its agents was not made for emergency purposes, within the four years prior to the
 19 filing of this action.

20 34. Defendants and its employees or agents are excluded from the Class. Plaintiffs do not
 21 know the number of members in the Class, but believes the Class members number in the
 22 hundreds of thousands, if not more. Thus, this matter should be certified as a Class
 23 action to assist in the expeditious litigation of this matter.

24 35. Plaintiffs and members of the Class were harmed by the acts of Defendants in at least the
 25 following ways: Defendants, either directly or through its agents, illegally contacted
 26 Plaintiffs and the Class members via their cellular telephones by using marketing and
 27 artificial or prerecorded voice messages, thereby causing Plaintiffs and the Class
 28 members to incur certain cellular telephone charges or reduce cellular telephone time for

1 which Plaintiffs and the Class members previously paid, and invading the privacy of said
2 Plaintiffs and the Class members. Plaintiffs and the Class members were damaged
3 thereby.

4 36. This suit seeks only damages and injunctive relief for recovery of economic injury on
5 behalf of the Class, and it expressly is not intended to request any recovery for personal
6 injury and claims related thereto. Plaintiffs reserves the right to expand the Class
7 definition to seek recovery on behalf of additional persons as warranted as facts are
8 learned in further investigation and discovery.

9 37. The joinder of the Class members is impractical and the disposition of their claims in the
10 Class action will provide substantial benefits both to the parties and to the court. The
11 Class can be identified through Defendants' records or Defendants' agents' records.

12 38. There is a well-defined community of interest in the questions of law and fact involved
13 affecting the parties to be represented. The questions of law and fact to the Class
14 predominate over questions which may affect individual Class members, including the
15 following:

- 16 a) Whether, within the four years prior to the filing of this First Amended
17 Complaint, Defendants or its agents sent any marketing and artificial or
18 prerecorded voice messages to the Class (other than a message made for
19 emergency purposes or made with the prior express consent of the called party) to
20 a Class member using any automatic dialing and/or SMS texting system to any
21 telephone number assigned to a cellular phone service;
- 22 b) Whether Plaintiffs and the Class members were damaged thereby, and the extent
23 of damages for such violation; and
- 24 c) Whether Defendants and its agents should be enjoined from engaging in such
25 conduct in the future.

26 39. As a person that received at least one marketing and artificial or prerecorded voice
27 message without Plaintiffs' prior express consent, Plaintiffs are asserting claims that are
28 typical of the Class. Plaintiffs will fairly and adequately represent and protect the

1 interests of the Class in that Plaintiffs have no interests antagonistic to any member of the
2 Class.

3 40. Plaintiffs and the members of the Class have all suffered irreparable harm as a result of
4 the Defendants' unlawful and wrongful conduct. Absent a class action, the Class will
5 continue to face the potential for irreparable harm. In addition, these violations of law
6 will be allowed to proceed without remedy and Defendants will likely continue such
7 illegal conduct. Because of the size of the individual Class member's claims, few, if any,
8 Class members could afford to seek legal redress for the wrongs complained of herein.

9 41. Plaintiffs have retained counsel experienced in handling class action claims and claims
10 involving violations of the Telephone Consumer Protection Act.

11 42. A class action is a superior method for the fair and efficient adjudication of this
12 controversy. Class-wide damages are essential to induce Defendants to comply with
13 federal and California law. The interest of Class members in individually controlling the
14 prosecution of separate claims against Defendants is small because the maximum
15 statutory damages in an individual action for violation of privacy are minimal.
16 Management of these claims is likely to present significantly fewer difficulties than those
17 presented in many class claims.

18 43. Defendants have acted on grounds generally applicable to the Class, thereby making
19 appropriate final injunctive relief and corresponding declaratory relief with respect to the
20 Class as a whole.

21 **FIRST CAUSE OF ACTION**

22 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

23 **47 U.S.C. § 227 ET SEQ.**

24 44. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as
25 though fully stated herein.

26 45. The foregoing acts and omissions of Defendants constitute numerous and multiple
27 negligent violations of the TCPA, including but not limited to each and every one of the
28 above-cited provisions of 47 U.S.C. § 227 et seq.

1 46. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq, Plaintiffs and
2 The Class are entitled to an award of \$500.00 in statutory damages, for each and every
3 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

4 47. Plaintiffs and the Class are also entitled to and seek injunctive relief prohibiting such
5 conduct in the future.

6 **SECOND CAUSE OF ACTION**

7 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**

8 **TELEPHONE CONSUMER PROTECTION ACT**

9 **47 U.S.C. § 227 ET SEQ.**

10 48. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as
11 though fully stated herein.

12 49. The foregoing acts and omissions of Defendants constitute numerous and multiple
13 knowing and/or willful violations of the TCPA, including but not limited to each and
14 every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

15 50. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 et seq,
16 Plaintiffs and The Class are entitled to an award of \$1,500.00 in statutory damages, for
17 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
18 227(b)(3)(C).

19 51. Plaintiffs and the Class are also entitled to and seek injunctive relief prohibiting such
20 conduct in the future.

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiffs respectfully request the Court grant Plaintiffs and The Class members the
23 following relief against Defendants:

24 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**

25 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 26 • As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiffs
27 seek for themselves and each Class member \$500.00 in statutory damages, for each
28 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

52. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Dated: January 7, 2013

Respectfully submitted,

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